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# State v. Montoya Appellant's Brief Dckt. 39470

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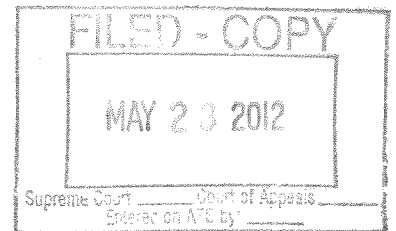
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, )  
)  
Plaintiff-Respondent, )  
)  
vs. )  
)  
RIGOBERTO CHACON MONTOYA, )  
)  
Defendant-Appellant. )  
\_\_\_\_\_ )

S.Ct. No. 39470-2011



\_\_\_\_\_  
OPENING BRIEF OF APPELLANT  
\_\_\_\_\_

Appeal from the District Court of the Fifth  
Judicial District of the State of Idaho  
In and For the County of Minidoka  
\_\_\_\_\_

HONORABLE MICHAEL CRABTREE  
District Judge  
\_\_\_\_\_

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## TABLE OF CONTENTS

I. Table of Authorities .....	ii
II. Statement of the Case .....	1
A. Nature of the Case .....	1
B. Procedural History and Statement of Facts .....	1
III. Issue Presented on Appeal .....	9
Should the order denying the Criminal Rule 35 motion be reversed because the order was not based upon sound reasoning?	
IV. Argument .....	9
Relief Should Be Granted Because the District Court's Order Was Not Based Upon Sound Reasoning .....	9
V. Conclusion .....	11

**I. TABLE OF AUTHORITIES**

**STATE CASES**

*State v. Allbee*, 115 Idaho 845, 771 P.2d 66 (Ct. App. 1989) ..... 9

*State v. Anderson*, 152 Idaho 21, 266 P.3d 496 (Ct. App. 2011) ..... 9

*State v. Izaguirre*, 145 Idaho 820, 186 P.3d 676 (Ct. App. 2008) ..... 9, 10

*State v. Manley*, 142 Idaho 338, 127 P.3d 945 (2005) ..... 10

**STATE STATUTES**

I.C. §§ 18-903, 18-918(2) ..... 1, 4

## II. STATEMENT OF THE CASE

### A. Nature of the Case

This is an appeal from the denial of a Criminal Rule 35 motion. Relief should be granted because the district court relied on unsound reasoning in denying the motion.

### B. Procedural History and Statement of Facts

On November 10, 2008, Rigoberto Montoya pled guilty to felony domestic violence. I.C. §§ 18-903, 18-918(2). R 66. According to the PSI, Lindsey Arredondo, the mother of Rigoberto's children, told the police that when she refused to get out of a car at Rigoberto's house, he pulled her out causing her to fall and then kicked her and dragged her into the house where he hit her more than once. PSI (Exhibit on Appeal) p. 2.

Rigoberto (age 22) and Lindsey (age 20) had been childhood sweethearts. They had been together for more than six years and have three children together (ages 3 years, 2 years and 10 months). Although they did not live together, Ribogerto loves his children very much and was with them every other day. PSI p. 7-10. He spoke of his children as "my beautiful kids" and said of them "Now that's the only thing I don't regret." PSI p. 6. Rigoberto also said that this was the first time ever that he struck Lindsey. PSI p. 2. This statement is consistent with the information his mother shared for the domestic violence evaluation. "[Rigoberto's mother] has talked with Lindsey, who at first was in shock with Rigoberto's behavior. They both didn't believe Rigoberto could do such a thing." Page 10 of domestic violence evaluation attached to PSI.

Rigoberto said that just prior to the fight, he and Lindsey had been at a dance; on the way home, he discovered that she was getting telephone calls from another man and that made him mad and jealous. He said, "[L]ooking back at it minutes after it happen[ed] I knew I had done

something horrible and that I was going to pay for it.” PSI p. 2. “Looking back [at] it now man I feel so bad and sorry[.] I don’t know if she will or not ever forgive me[,] but by seeking the help I need like I’m trying to do so now[,] I would be a lot better.” *Id.*

Rigoberto never finished school. He dropped out after 9<sup>th</sup> grade, having been suspended for swearing and leaving class without permission. He tried to get his GED but was unable to pass the tests. He still wanted to get the GED and was planning at the time of the PSI interview to take the tests again. PSI p. 8.

Rigoberto did have alcohol and marijuana issues, but had been free of both for approximately five months before sentencing. PSI p. 10-11. (For three months prior to sentencing, Rigoberto submitted to daily intox testing at the police department and never tested positive. PSI p. 12).

Prior to sentencing, Rigoberto completed a domestic violence evaluation which did not recommend any anger management counseling and concluded that Rigoberto was vulnerable to reacting badly under the influence of drugs or alcohol, but that so long as those are avoided, Lindsey had no reason to fear him and he would be a productive member of the community. PSI p. 12 and pages 7-8 and 10 of domestic violence evaluation attached to PSI.

Rigoberto never denied his wrongdoing and expressed remorse and a desire to do better. PSI p. 12-13.

The district court sentenced Rigoberto to eight years with four fixed, but suspended the sentence and placed him on probation for three years. R 69.

Three months later, in March 2009, a stipulated order was entered whereby Rigoberto admitted to violating probation by contacting Lindsey several times. R 81, 97-101.

As a result, probation was revoked, the original sentence was reimposed, the execution of judgment was suspended and the court retained jurisdiction. R 99-100. Prior to the end of the retained jurisdiction period, the Department of Corrections requested an extension to allow Rigoberto time to complete "A New Direction." R 103.

That request was granted by then District Judge John M. Melanson. R 104-105. And, after Rigoberto completed the programming, IDOC recommended probation. He had attended academic classes and was on track to earn his GED before leaving NICI. His grammar instructor wrote:

Mr. Montoya completed Grammar and Usage class on June 30, 2009. He was an enthusiastic, outgoing student who brought a lot of humor and life to the class. He was always willing and eager to share what he had written, to ask questions when he needed clarification and to express his thoughts in class discussion. His writing skills are low, but he improved from when he began a month ago. If he continues to improve at this rate, he will be ready to test perhaps by the end of next month. It may take two months of Writing Skills class to be sure of that. He completed all assignments and demonstrated effort and willingness to work to improve. He earned an A in the class and is recommended to move into Writing Skills class.

9/4/09 Addendum to PSI (Exhibit on Appeal) p. 3.

With regard to A New Direction, the following was reported:

Mr. Montoya appeared to want to put legitimate effort into the 'A New Direction' group from the beginning. He gave an open and honest narrative of the assault on his girlfriend in the first week of class. It is often difficult for offenders to talk about their crime without minimizing or justifying their crime in the first part of group. He did not glorify what he did and said he wanted to accept responsibility for his actions. He said he has been with his girlfriend for six years and they are childhood sweethearts. They have three children together. I asked him about his charges of breaking the No Contact Order before he was incarcerated, and he admitted to it and said he was going crazy without his children. He said that since that time his girlfriend is with someone else and he has accepted that. All he wants is to get out and be a good father to his children. He said he is immature and has done a lot of stupid things and he still tends to 'goof off.' He appears to

be sincere and has not tried to contact his girlfriend while incarcerated. When talking about his children and his desire to be a good father, he gets very emotional and has broken down several times in class. He said he has rooms in his apartment for his children and he has visitation rights. His children have been spending time with his family and they say his children miss him.

*Id.*

The IDOC report continued:

Mr. Montoya did an excellent job on his workbooks and Thinking Reports. He answered the questions fully and wrote lots of notes on the side of the pages. He was able to relate to all the books and said he understood how his criminal and addictive thinking has driven his behavior. He said he is tired of being in trouble and wants to stop with his behaviors. He understands his addiction and knows he will need to stop drinking. He said he will find it hard at times to not drink and is ready to go to meetings and do whatever it takes to stay sober. When asked what he learned in class he said, 'Since I've come here to NICI New Directions Group "A," I learned how big a piece of crap I was before I came. Then coming to get the blue book, *Criminal and Addictive Thinking*, is how I feel I've got a lot out of and which it will help me go through tough times on the outs. Getting the brown book, *Drug and Alcohol Education* and green book *Socialization* were two good books, it also taught me a lot about myself and how to deal with my stuff. Also, and that up till now I'm still looking forward to getting some more life lessons in group and the gray book, *Relapse Prevention*. I think all these New Directions books will help me for a new direction.'

9/4/09 Addendum to PSI p. 3-4.

The C-Notes attached to the IDOC report recorded that Rigoberto had undertaken anger management programming and:

He has learned to identify his different triggers, emotional, physical, cognitive and behavioral cues to his anger. He has explored the origins of his anger and has learned different ways to manage his anger when he feels it building. He has learned intervention points that he can effectively cause change before he explodes and has negative consequences for his anger.

C-Notes page 1, entry for 8/31/09.



Based upon the IDOC recommendation, on September 14, 2009, Judge Melanson suspended Rigoberto's sentence and placed him on probation for three years. R 109-117.

Nearly a year later, Rigoberto admitted violating probation by testing positive for marijuana and methamphetamine. R 155. As a result, probation was revoked and the original sentence was reimposed. However, the court retained jurisdiction for 365 days. R 158-162.

After an initial adjustment to the Therapeutic Community, again, Rigoberto did well on the rider:

. . . He admitted that he wanted to fight the process initially, although now can recognize that this programming has been a positive for him even though 'it was really hard.' Mr. Montoya seems, at this time, to know how to continue to change his criminal core beliefs and continue to create positive prosocial behavior. He has been able to recognize how his addictive use of alcohol and other drugs has affected him, his family members, and society as a whole. He seems to be able to admit to his addiction and understands the importance of continuing with building his foundation for recovery by following his written relapse prevention plan. He has been able to become open to input and feedback for other TC participants, and has been able to give honest input and feedback in an appropriate manner when necessary. It is noted that NICI staff appreciated his willingness to take on volunteer duties to include shoveling snow and helping with the daily garbage duties.

6/22/11 Addendum to PSI (Exhibit on Appeal) p. 2.

In addition, Rigoberto continued his academic work at NICI and earned an A in Writing Skills as well as received all the required instruction to pass a CDL class. According to NICI, he "showed leadership in [the] class and respect toward the teachers and the assistants." 6/22/11 Addendum to PSI p. 3. And, he earned his GED through Lewis and Clark State College. C-Notes attached to 6/22/11, Addendum to PSI, entry for 1/26/11.

Rigoberto's discharge summary reported that he took on the job of creative energy coordinator "which consists of creating activities on a daily basis to keep the TC community

uplifting while learning to have fun without alcohol or drugs. He came up with new creative ideas and always made sure he went through the designed process . . .” 6/22/11 Addendum to PSI, Discharge Summary p. 1.

The discharge summary also stated, “By completing all the assignments within his Cognitive Self-Change programming, he has been able to understand [that] the process of changing his core beliefs will result in positive behavior.” And, “Other TC participants give him praise and push-ups for making the changes, and now can verbalize they can see him as an honest caring individual, who has worked hard to change his core beliefs and thoughts.” *Id.*, p. 2.

Again, Rigoberto was recommended for probation. 6/22/11 Addendum to PSI p. 4.

Five days later, NICI sent another letter as an addendum to the PSI. This letter stated that Rigoberto had used bad language in the chow hall on June 28, 2011, and when confronted, stated that he did not care how his cussing affected others because “I will be on the bus home.” The letter concluded by stating that the recommendation for probation was not expected to change, however, Rigoberto’s behavior in this event did not show that he had internalized the concepts and principles of the TC programming, that it did not reflect prosocial traits, and that it did not indicate that Rigoberto had taken the past nine months seriously. R 165.

In response, Judge Crabtree vacated the previously set rider review hearing and issued an order relinquishing jurisdiction. The court’s order recounted IDOC’s recommendation for probation and the narrative that on the 28<sup>th</sup> Rigoberto had cussed and then said that he did not care about the effect that had and then stated:

The court reaches this conclusion because it is apparent that, although the Defendant was afforded nine months of TC treatment, he nonetheless continues to exhibit and express persistent criminal core beliefs. He has not taken the

treatment program seriously or applied the information from the program into his core thinking processes, and he continues to exhibit and express the very thinking and behavioral characteristics that were central to his original offense and to his probation violations. The court is persuaded that, after two retained jurisdiction programs, the Defendant does not demonstrate that he is a suitable candidate for probation.

R 169.

Rigoberto filed a timely Criminal Rule 35 motion to reconsider the sentence with a supporting affidavit. R 173-174. The affidavit recounts the events in the chow hall:

3. That on the evening of June 26, 2011, your Affiant was observed using bad language, bulls–t, by offender, Brandon Rios, during dinner.
4. That when Mr. Rios brought this to your Affiant’s attention, he used a process they have at the TC, which is a ‘verbal pullup.’ When getting a ‘verbal pullup,’ the inmate is supposed to respond with the correct response, which is ‘Thank you. I’ll get on top of that,’ and correct the behavior. If the inmate does not correct his behavior, the inmate giving the verbal, goes ahead with the next step, which is a written pullup. The inmates then confront each other at the game.
5. That Mr. Rios did give your Affiant a verbal; however, he did so in a negative joking manner, using foul language, saying, ‘Hey, I’m f-----g verbally pulling you up for cussing,’ and demanded the correct response from your Affiant.
6. That your Affiant responded ‘Thank you. I’ll get on top of that.’
7. That your Affiant then said, ‘Now I’m pulling you up for using the process in a negative manner.’
8. That at that time, Mr. Rios, who responded with ‘What are you gonna do, pull me up?’ ‘I don’t give a f–k. I ain’t going to be at the game, since you are going home, you won’t be present. Your pullup won’t be valid, and will just get thrown out.’
9. That at that point, your Affiant stopped the conversation and went back to the unit.
10. Your Affiant then went to his coordinator and asked him for advice. Your Affiant explained his situation, and asked his coordinator if his pullup was going to be valid, if he pulled Mr. Rios up?

11. That the coordinator told your Affiant to forget it. He said your Affiant would be going home the day of the game, and that he would not be present to confront Mr. Rios' behavior.

12. That on the following day, the schedule was changed, and they had a game. Your Affiant's name was called, and he went to get confronted by Mr. Rios.

13. That your Affiant denied what Mr. Rios said, because that wasn't what happened. Since your Affiant did not pull Mr. Rios up, he could not respond and state his side of the situation. At the game, if you are there being confronted, you are not allowed to respond unless you admit to the behavior. Your Affiant admitted to using the bulls--t word, but not to what Mr. Rios stated.

14. That nothing was resolved at the game. Your Affiant was sanctioned to 'Bunk Restriction, Loss of Commissary and was put on non-verbal contract for the remainder of his stay there,' for cussing.

15. That your Affiant did [internalize] the concepts and principles of the TC Programming at all times while at N.I.C.I., even on the evening of June 26, 2011. He took his programming seriously. He continues to read through his programming books.

R 175-177.

The district court denied the Rule 35 motion without a hearing. After reciting the standards of review applicable to a Rule 35 motion and recounting the cussing incident, the court wrote:

The court relinquished jurisdiction because the Defendant continued to exhibit and express persistent criminal core beliefs, even though he received nine months of TC treatment during his second retained jurisdiction period. The court was persuaded that there was an undue risk the Defendant would reoffend based on the TC staff's conclusions that the Defendant had not taken the treatment program seriously or applied the information from the program into his core thinking processes.

R 185.

This appeal timely follows. R 190-192.<sup>1</sup>

### III. ISSUE PRESENTED ON APPEAL

Should the order denying the Criminal Rule 35 motion be reversed because the order was not based upon sound reasoning?

### IV. ARGUMENT

#### Relief Should Be Granted Because the District Court's Order Was Not Based Upon Sound Reasoning

This Court should reverse the order denying the Rule 35 motion because the district court abused its discretion insofar as the court did not make a reasonable decision in finding that a single incident of saying “bullsh—t” was an exhibition and expression of “persistent criminal core beliefs” and indicated that Rigoberto had not taken his programming seriously and showed an undue risk of reoffense.

Denial of a Rule 35 motion is reviewed for an abuse of discretion. *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In reviewing an appeal from an exercise of discretion, the appellate court conducts a three-part analysis examining: 1) whether the district court rightly perceived the issue as one of discretion; 2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to the specific choices; and 3) whether the court reached its decision by an exercise of reason. *State v. Anderson*, 152 Idaho 21, 22, 266 P.3d 496, 497 (Ct. App. 2011). If the district court acted irrationally, an abuse of discretion will be found. *State v. Izaguirre*, 145 Idaho 820, 823, 186

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<sup>1</sup> Rigoberto's notice of appeal is timely only as to the denial of the Rule 35 motion. If it had been timely as to the order relinquishing jurisdiction, he would be challenging that order on appeal as well as the order denying Rule 35 relief.

P.3d 676, 679 (Ct. App. 2008). *See State v. Manley*, 142 Idaho 338, 127 P.3d 945 (2005). For example, in *Izaguirre*, the Court of Appeals vacated the sentence and the denial of the Rule 35 motion after finding that it could not state that either the sentence or the denial of the Rule 35 motion was predicated on sound reasoning.

In this case, as in *Izaguirre*, the denial of the Rule 35 motion must be vacated because it was not based upon sound reasoning.

Rigoberto successfully completed his first term of retained jurisdiction. And, when he later had a probation violation, it was not because of another episode of violence. Rather, it was because of substance abuse. He then successfully completed the second rider. Not only did he complete the programming, he volunteered for positions and tasks above and beyond the requirements of the program, he demonstrated leadership and respect, he addressed addiction issues, and he showed himself to be “an honest caring individual, who has worked hard to change his core beliefs and thoughts.”

And, then, on one of his last days at NICI, Rigoberto swore. He said, “bulls–t,” and he was called on it by another inmate. Not only was he called on it, but when he tried to respond as instructed in the TC programming, the other inmate abused the process responding in a way that not only was inappropriate but was provoking. Yet, Rigoberto did not take the bait. He tried to work the situation according to TC procedure and when that failed, he walked away. And, then he sought advice from his coordinator. And, he followed that advice. Finally, when that advice turned out to be wrong and when he was sent to the game and could not respond - because by following his coordinator’s advice he was put in a position where he could not respond - Rigoberto did not get angry. Rather, he accepted a punishment.

If anything, the cussing incident showed that the TC programming worked for Rigoberto. He changed from a person who became so enraged when his girlfriend got a telephone call from another man that he committed felony domestic violence, to a person who could not be provoked and even quietly accepted a punishment that could certainly be seen as unfair. Rigoberto was a success story.


Yet, the district court found that one incident of cussing showed that Rigoberto was expressing persistent criminal core beliefs, had not internalized the programming and was an undue danger to reoffend. This despite the fact that NICI recommended probation. This was not a reasonable decision.

Because the district court's denial of the Rule 35 motion was not predicated on sound reasoning, it should be reversed and this Court should reinstate Rigoberto's probation.

#### **IV. CONCLUSION**

For the reasons set forth above, Rigoberto asks this Court to reverse the order denying the Rule 35 motion and reinstate him on probation.

Respectfully submitted this 24<sup>th</sup> day of May, 2012.

  
Deborah Whipple  
Attorney for Rigoberto Montoya

CERTIFICATE OF SERVICE

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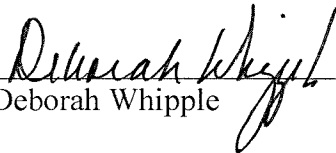
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